UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte CHARLES R. WEIRAUCH and JOEL B. LARNER

Appeal No. 2006-0829
Application No. 09/921,024

ON BRIEF

Before BARRETT, RUGGIERO, and MACDONALD, Administrative Patent Judges.

RUGGIERO, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal from the final rejection of claims 3 and 4. Claims 1 and 2 have been canceled and claims 5 and 6 have been withdrawn from consideration as being directed to a non-elected invention.

The claimed invention relates to a data storage medium which includes a data structure in the form of a disk control block (DCB) which is used for administration and control information for the data storage medium. Each disk control block includes a control block identifier, which specifies the function of the disk control block, as well as a set of standard access control parameters. If an unrecognized disk control block is detected by a drive, the standard control parameters can still be decoded so that the drive behavior is not inconsistent with the requirements of the unrecognized control block.

Claim 3 is illustrative of the invention and reads as follows:

3. A data storage medium, comprising:

data stored in the form of a data structure, the data structure including a header;

the header including a bit specifying control of reading part of the data structure.

The Examiner relies on the following prior art:

Curtis et al (Curtis)	5,233,576	Aug. 03, 1993

Claims 3 and 4 stand finally rejected under 35 U.S.C. § 102(b) as being anticipated by Curtis.[1]

Rather than reiterate the arguments of Appellants and the Examiner, reference is made to the Briefs[2] and Answer for the respective details.

OPINION

We have carefully considered the subject matter on appeal, the rejection advanced by the Examiner and the evidence of anticipation relied upon by the Examiner as support for the rejection. We have, likewise, reviewed and taken into consideration, in reaching our decision, Appellants' arguments set forth in the Briefs along with the Examiner's rationale in support of the rejection and arguments in rebuttal set forth in the Examiner's Answer. Only those arguments actually made by Appellants have been considered in this decision. Arguments which Appellants could have made but chose not to make in the Brief have not been considered and are deemed to be waived [see 37 CFR § 41.37(c)(1)(vii)].

[1] At page 2 of the Answer, the Examiner indicates that the rejection of claims 3 and 4 under the first paragraph of 35 U.S.C. § 112 has been withdrawn.

[2]The Appeal Brief was filed August 19, 2005. In response to the Examiner's Answer mailed October 26, 2005, a Reply Brief was filed December, 2005 which was acknowledged and entered by the Examiner as indicated in the communication mailed January 12, 2006.

It is our view, after consideration of the record before us, that the Curtis reference fully meets the invention as set forth in claims 3 and 4. Accordingly, we affirm.

We note that anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention as well as disclosing structure which is capable of performing the recited functional limitations. RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir.); cert. dismissed, 468 U.S. 1228 (1984); W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

At pages 3 and 4 of the Answer, the Examiner indicates how the various limitations in claims 3 and 4 are read on the disclosure of Curtis. In particular, the Examiner points to the illustrations in Figures 2 and 4 of Curtis as well as the disclosure at column 3, lines 35-60 of Curtis.

Appellants' arguments in response to the Examiner's 35 U.S.C. § 102(b) rejection assert that the Examiner has not shown how each of the claimed features are present in the disclosure of Curtis so as to establish a case of anticipation.

According to Appellants (Brief, pages 3 and 4; Reply Brief, pages 1 and 2), there is no "control of reading" as claimed in Curtis since in both of Curtis' disclosed embodiments the media sectors can be read. In Curtis' first described embodiment, a determination is made as to whether a media device can be written or is read-only; however, the media can be read in both cases. Similarly, in the second embodiment described by Curtis, a determination is made as to whether a media device has been written and, if so, the device is then defined as a "write-once-read-many (WORM)" device. Thus, Appellants draw the conclusion that, since Curtis' media device can be read in both described embodiments, there is no "control of reading" since Curtis' storage status bits do not restrain or have any power over reading.

After careful review of the Curtis reference in light of the arguments of record, however, we are in general agreement with the Examiner's position as stated in the Answer. While we agree with the Examiner (Answer, page 4) that there is nothing in the language of the appealed claims which requires the interpretation

of "control of reading" as meaning the prohibition of reading, our review of Curtis reveals that Curtis has a disclosure of exactly this circumstance. As illustrated in Curtis' Figure 5 flow chart, and described at column 6, lines 46-57 of Curtis, when both the WORM and MO status bits are not set, no flags are set and the media device is ejected as not being suitable for a particular drive. Therefore, the storage status bit conditions in Curtis "control the reading" of the media device as claimed since when both the WORM and MO storage status bits are not set, the device can not be read.

In view of the above discussion, since the Examiner's prima facie case of anticipation has not been overcome by any convincing arguments from Appellants, the Examiner's 35 U.S.C. § 102(b) rejection of independent claim 3, as well as dependent claim 4 not separately argued by Appellants, is sustained. Therefore, the decision of the Examiner rejecting claims 3 and 4 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv)(effective September 13, 2004).

AFFIRMED

LEE E. BARRETT
Administrative Patent Judge)

JOSEPH F. RUGGIERO
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